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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,769	12/31/2001	Gene Gould	P 016417 272123	9179
27500	7590	08/11/2004	EXAMINER	
PILLSBURY WINTHROP LLP ATTENTION: DOCKETING DEPARTMENT 11682 EL CAMINO REAL, SUITE 200 SAN DIEGO, CA 92130			BROWN, KHALED	
			ART UNIT	PAPER NUMBER
			2877	

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/039,769	Applicant(s) GOULD ET AL.	
	Examiner Khaled Brown	Art Unit 2877	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-69 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-22 and 31-69 is/are allowed.
- 6) ☒ Claim(s) 23-27 is/are rejected.
- 7) ☒ Claim(s) 28-30 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4-5-04 & 6-18-04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Prosecution on the merits of this application is reopened on claims 23-27 considered unpatentable for the reasons indicated below:

Prior Art that reads on claims 23-27 has been discovered.

2. Applicant is advised that the Notice of Allowance mailed March 29, 2004 is vacated. If the issue fee has already been paid, applicant may request a refund or request that the fee be credited to a deposit account. However, applicant may wait until the application is either found allowable or held abandoned. If allowed, upon receipt of a new Notice of Allowance, applicant may request that the previously submitted issue fee be applied. If abandoned, applicant may request refund or credit to a specified Deposit Account.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 23, 24, 26 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Denisov et al (US 4546256).

Re clm 23: Denisov et al discloses a double monochromator comprising (Fig 1): an entrance aperture (5), a first optical grating (6), a first selection aperture (7), a second optical grating (8), and a second selection aperture (9).

Re clm 24: concave grating (Col 3 line 22)

Re clm 26: the first optical grating and the second optical grating pivots (Col 4 lines 31-34)

Re clm 27: means for pivoting (Col 3 lines 25-29)

4. Claims 23, 24 and 25 are rejected under 35 U.S.C. 102(e) as being anticipated by Fallet et al (US 6040904).

Re clm 23: Fallet et al discloses a double monochromator comprising (Fig 2): an entrance aperture (84), a first optical grating (88), a first selection aperture (inherent, shown but not given a separate element number), a second optical grating (88), and a second selection aperture (90).

Re clms 24,25: holographic concave grating (Col 5 line 22)

Allowable Subject Matter

5. Claims 1-22 and 31-69 are allowed.
6. The following is an examiner's statement of reasons for allowance: the prior art of record fails to disclose or suggest "a component corresponding to or equivalent to, the recited light transfer module" in conjunction with the rest of the claimed subject matter as pointed out in applicants remarks filed 1-22-04.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

7. Claims 28-30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
8. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to disclose or suggest the band drive mechanism, or the polarized filter holder selectively operative to insert the polarized optical filter into the path of the output light all in conjunction with the rest of the claimed subject matter.
9. Note: the IDS filed April 5, 2004 has not been considered because the references cited on the PTO-1449 form were first cited by the examiner on a PTO-892 Notice of References Cited form mailed to applicant on July 17, 2003. Additionally, the applicant's certification statement accompanying the PTO-1449 says the documents on the PTO-1449 "was first cited in any communication from a foreign patent office in a counterpart

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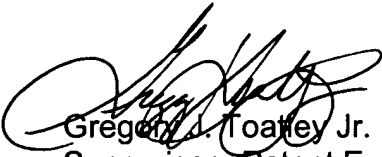
foreign application". However, the documents listed on the Form PTO 1449 was first cited in a communication from the U.S. Receiving Office and not a foreign patent office. The IDS filed June 18, 2004 has been considered and a signed copy is attached to this office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khaled Brown whose telephone number is 571-272-2411. The examiner can normally be reached on M-F 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J Toatley Jr. can be reached on 571-272-2800 Ext. 77. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KB
July 26, 2004


Gregory J. Toatley Jr.
Supervisory Patent Examiner
Art Unit 2877